

**STATE OF TENNESSEE
DEPARTMENT OF HEALTH**

IN THE MATTER OF:)	BEFORE THE TENNESSEE
)	BOARD OF DENTISTRY
CLARENCE L. NABERS, JR., DDS)	
RESPONDENT)	CASE NUMBER: 2018033521
)	
KNOXVILLE, TENNESSEE)	
TENNESSEE LICENSE NO.: 6839)	

CONSENT ORDER

Come now the Division of Health Related Boards of the Tennessee Department of Health (hereinafter the "Division"), by and through the Office of General Counsel, and Respondent Clarence L. Nabers, Jr., DDS, (hereinafter "Respondent"), and respectfully move the Tennessee Board of Dentistry (hereinafter the "Board") for approval of this Consent Order affecting Respondent's license to practice as a dentist in the State of Tennessee.

The Board is responsible for the regulation and supervision of dentists licensed to practice in the State of Tennessee. *See* Tennessee Dental Practice Act (hereinafter the "Practice Act"), Tennessee Code Annotated Section (hereinafter "TENN. CODE ANN. §") 63-5-101, *et seq.* It is the policy of the Board to require strict compliance with the laws of this State, and to apply the laws so as to preserve the quality of dental care provided in Tennessee. It is the duty and responsibility of the Board to enforce the Practice Act in such a manner as to promote and protect the health, safety and welfare of the citizens of the State of Tennessee, including by disciplining dentists who violate the provisions of TENN. CODE ANN. § 63-5-101, *et seq.*, or the Rules and Regulations promulgated by the Board and recorded in the Official Compilation Rules and Regulations of the State of Tennessee (hereinafter "TENN. COMP. R. & REGS.").

Respondent, by his signature to this Consent Order, waives the right to a contested case hearing and any and all rights to judicial review in this matter. Respondent agrees that presentation

to and consideration of this Consent Order by the Board for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should this Order not be ratified. Likewise, all matters, admissions and statements disclosed or exchanged during the attempted ratification process shall not be used against Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.

I. STIPULATIONS OF FACT

1. Respondent has been at all times pertinent hereto licensed by the Board as a dentist in the State of Tennessee, having been granted license number 6839 by the Board on August 6, 1992, which currently has an expiration date of September 30, 2020.
2. Respondent is the owner and operator of two (2) dental offices in Knoxville, Tennessee. Respondent admitted that from July 1, 2018 to November 1, 2018, he was the only dentist for both locations. Respondent avers that the dentist he had hired to provide patient services at his secondary downtown location suddenly resigned in or around July 2018, and it took several months for him to hire and train her replacement.
3. Respondent allowed dental hygienists to practice outside their scope of practice by providing comprehensive examinations, diagnoses and treatment planning without the Respondent present in the office. Respondent avers that it was not his normal practice to allow dental hygienists to provide services without him physically present in the office.
4. Respondent also allowed dental assistants to practice outside their scope of practice by providing new patient examinations, administering fillings; placing permanent crowns on multiple occasion; repairing or inserting permanent veneers; and inserting dental bridge.

5. Respondent admitted that both practices placed burs that had been used in dental procedures in cold sterile solution. Respondent admitted that he did not document as to when the burs were placed in the cold sterile solution. When staff was asked to produce the solution used for cold sterilization they were unable to locate the solution. Disposable burs were also reused after being placed in the cold sterile solution. Respondent has implemented new protocols for the documentation of the cold sterile solution, and the cleaning and maintaining of dental burs at both offices.
6. Respondent admitted that, at the time of the investigation, in both of his practice locations, autoclaves were not spore tested periodically to ensure that the autoclave was able to kill dangerous microorganisms on dental tools. Respondent retained an outside biological monitoring service to provide periodical spore testing as of December 2018.
7. The handpiece used on patients in dental procedures was not properly sanitized between patients and was only wiped with a sanitizing cloth.
8. The air water syringe used on patients in dental procedures was not properly sanitized between patients and was only wiped with a sanitizing cloth.
9. Leather dental chairs were not cleaned with a sanitizing agent. In response to the hygiene concerns raised in paragraphs 7-9, Respondent has implemented the following new office protocols: (1) Dental Bur Sterilization Protocol, (2) Operatory Disinfection and Sterilization Protocol, and (3) Handpiece Maintenance and Sterilization Protocol.
10. Respondent failed to maintain a crash cart at his downtown office location at the time of the investigation and had not inspected the office fire extinguishers since 2012. As of March 2019, both offices have passed office fire extinguisher inspections, and both offices have current and complete crash carts.

11. Respondent admitted to forging several certifications from Arrowhead Dental Laboratories, which is located in Arizona. Respondent admitted he did not attend these seminars and forged the documents he sent to the Board for his 2015-2016 continuing education audit.
12. Respondent also admitting to having his dental assistant forge a CPR card with his name and sent to the Board for his 2015-2016 continuing education audit. Respondent avers that he completed his CPR certification course for 2015, and misplaced his certification card. He avers that he created a new certification card to replace the one he had misplaced.
13. According to the review of 18 dental charts, Respondent had not recently updated the patients' medical history.

II. GROUNDS FOR DISCIPLINE

The facts stipulated in paragraphs one through eighteen in the Stipulations of Fact, *supra*, are sufficient to establish that grounds for discipline of Respondent's dental license exist. Specifically, Respondent has violated the following statutes or rules which are part of the Tennessee Dental Practice Act (TENN. CODE ANN. § 63-5-101, *et seq.*), for which disciplinary action before the Board is authorized:

14. The facts stipulated in paragraphs two (2) through seventeen (17) constitute a violation of TENN. CODE ANN. § 63-5-124(a)(1):

Unprofessional, dishonorable or unethical conduct

15. The facts stipulated in paragraphs three (3) and (4) constitute a violation of TENN. COMP. R. & REGS 0460-01-.12 (7):

Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by

training, by experience or by licensure, to perform them

16. The facts stipulated in paragraphs three (3) and (4) constitute a violation of TENN. COMP.

R. & REGS 0460-03-.09 (7):

Prohibited Procedures - Licensed dental hygienists are not permitted to perform:

- (a) Comprehensive examination, diagnosis and treatment planning;
- (b) Surgical or cutting procedures on hard or soft tissue, including laser, air abrasion or micro-abrasion procedures, except curettage or root planing;
- (c) Fitting, adjusting, and placement of prosthodontics appliances;
- (d) Issuance of prescription medications or medications not authorized by Rule 0460-03-.09 (1), or work authorizations;
- (e) Performance of direct pulp capping, pulpotomy, and other endodontic procedures not authorized by T.C.A. § 63-5-108 or Rule 0460-03-.09 (1);
- (f) Approving the final occlusion;
- (g) Placement of sutures;
- (h) Administration of conscious sedation or general anesthesia.
- (i) Administration of local anesthesia on patients without certification as provided in Rule 0460-03-.12.
- (j) Administration or monitoring of nitrous oxide without certification as provided in Rule 0460-03-.06;
- (k) Use of a high-speed handpiece intraorally;

17. The facts stipulated in paragraph five (5) constitute a violation of TENN. COMP. R. & REGS

0460-01-.11(8):

All single use or disposable items, labeled as such, used to treat a patient must be discarded and not reused

18. The facts stipulated in paragraphs five (5) through nine (9) constitute a violation of TENN.

COMP. R. & REGS 0460-01-.11(2):

The following instruments, unless disposable, shall be sterilized between patients, after removal of debris, by one (1) of the above methods provided in paragraph (1):

- (a) Low speed handpiece contra angles, prophy angles and nose cone sleeves

- (b) High speed handpieces and surgical handpieces
- (c) Hand and orthodontic instruments
- (d) Burs and bur changers, including contaminated laboratory burs and diamond abrasives
- (e) Endodontic instruments
- (f) Air-water syringe tips
- (g) High volume evacuator tips
- (h) Sonic or ultrasonic scalers and tips
- (i) Surgical instruments
- (j) Electro-surgery tips
- (k) Metal impression trays
- (l) Intra-oral radiographic equipment that can withstand heat sterilization

19. The facts stipulated in paragraph six (6) constitute a violation of TENN. COMP. R. & REGS 0460-01-.11(1):

The dentist shall ensure that at least one (1) of the following sterilization procedures is utilized daily for instruments and equipment:

- (a) Steam autoclave
- (b) Dry-heat
- (c) Chemical vapor
- (d) Disinfectant/chemical sterilant. U.S. Environmental Protection Agency (EPA) approved disinfectant shall be used in dilution amounts and specified time periods.
- (e) Any procedure listed in MMWR, Vol 41, No. RR8, pp. 1-12, May 28, 1993 or successor publications

20. The facts stipulated in paragraph six (6) constitute a violation of TENN. COMP. R. & REGS 0460-01-.11(3):

All heat sterilizing devices must be tested for proper function by means of a biological monitoring system that indicates microorganism kill. The biological monitoring system used must include a control to verify proper microbial incubation. In the event of a positive biological spore test, the dentist must take immediate action to ensure that heat sterilization is being accomplished. Immediate action is defined as following manufacturer guidelines and performing a second (2nd) biological spore test. In the event a second (2nd) positive biological spore test occurs, the device must be removed from service until repaired. Proof of such repair

must be maintained with the testing documentation

21. The facts stipulated paragraph six (6) constitutes a violation of TENN. COMP. R. & REGS 0460-01-.11(4):

Documentation must be maintained on all heat sterilizing devices in a log reflecting dates and person(s) conducting the testing, or by retaining copies of reports from an independent testing entity. The documentation shall be maintained for a period of at least two (2) years, and shall be maintained in the dental office and be made immediately available upon request by an authorized agent of the Tennessee Department of Health

22. The facts stipulated in paragraphs seven (7) though nine (9) constitutes a violation of TENN. COMP. R. & REGS 0460-01-.11(10):

Oral prosthetic appliances received from a dental laboratory must be washed with soap or a detergent and water, rinsed well, appropriately disinfected, and rinsed well again before the prosthetic appliance is placed in the patient's mouth

23. The facts stipulated in paragraph eleven (11) constitute a violation of TENN. CODE ANN. § 63-5-124(a)(7):

Making or signing in one's professional capacity any certificate that is known to be false at the time one makes or signs such certificate

24. The facts stipulated in paragraphs eleven and twelve (11-12) constitute a violation of TENN. CODE ANN. § 63-5-124(a)(3):

Making false or misleading statements or representations, being guilty of fraud or deceit in obtaining admission to practice or being guilty of fraud or deceit in the practice of dentistry

25. The facts stipulated in paragraph thirteen (13) constitute a violation of TENN. COMP. R. & REGS 0460-02-.12(e) (4):

At a minimum, all dental patient records shall include:

- (i) A charting of the patient's teeth conditions.
- (ii) Concise description and treatment date for services performed.
- (iii) Concise medical history.
- (iv) Notation of dates, types, and amounts of pharmaceuticals prescribed or dispensed.

- (v) Readable x-rays when required for services rendered.

III. POLICY STATEMENT

The Tennessee Board of Dentistry takes the following action in order to protect the health, safety and welfare of the citizens of the State of Tennessee and ensure that the public confidence in the integrity of the dental profession is preserved.

IV. ORDER

NOW THEREFORE, Respondent agrees to the following:

26. The Tennessee dental license of Clarence L. Nabers, Jr., DDS, License Number 6839, is hereby placed on **PROBATION** for two years from the date of entry of this Consent Order.
27. Within thirty (30) days of the effective date of this Order, Respondent shall contact and complete a Tennessee Occupational Health and Safety Administration (TOSHA) Consultative Services Program offered through the Tennessee Department of Labor and Workforce Development.
28. Within sixty (60) days of the effective date of entry of this Order, Respondent must submit proof of new heat sterilizing devices in both dental office locations; proof of documentation on all heat sterilizing devices in a log reflecting dates and person(s) conducting the testing, or proof of an independent testing entity for each dental office location and proof of appropriate sterilization solutions in both dental office locations.
29. Within 120 days of the effective date of entry of this Order, Respondent must enroll and successfully complete ten (10) continuing education hours in the area of ethics and professionalism; ten (10) continuing education hours in the area of infection control and ten (10) continuing education hours in the area record keeping and billing for a total of

thirty (30) continuing education hours. Within thirty (30) days after completion of the thirty (30) continuing education hours, Respondent shall mail or deliver proof of compliance with this course requirement to: **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243.** A notation shall be placed on said proof that it is for Clarence L. Nabers, Jr., Complaint No. 2018033521. Any continuing education hours earned from attendance and completion of the courses required by this paragraph shall be in addition to the continuing education hours required to maintain licensure.

30. Respondent must pay two (2) Type A Civil Penalties, in the amount of one thousand dollars (\$1,000.00) each, for allowing dental hygienists and dental assistants to practice outside their scope of practice as outlined in paragraphs three (3) and four (4) of the Stipulations of Fact, *supra*.

31. Respondent must pay six (6) Type A Civil Penalties, in the amount of one thousand dollars (\$1,000.00) each, for failing to properly clean, disinfect and sterilize instruments as outlined in paragraphs five (5) through nine (9) of the Stipulations of Fact, *supra*.

Respondent must pay one (1) Type A Civil Penalty, in the amount of one thousand dollars (\$1,000.00), for failing to maintain a crash cart in either of his dental practices and failing to timely inspect office fire extinguishers as outlined in paragraph twelve (12) of the Stipulations of Fact, *supra*.

32. Respondent must pay one (1) Type A Civil Penalty, in the amount of one thousand dollars (\$1,000.00), for forging continuing education and CPR certificates for his continuing education audit as outlined in paragraph eleven (11) and twelve (12) of the Stipulations of Fact, *supra*.

33. Respondent must pay one (1) Type A Civil Penalty, in the amount of one thousand dollars (\$1,000.00), for failing to include a concise medical history in patient records as outlined in paragraph thirteen (13) of the Stipulations of Fact, *supra*.
34. Any and all civil penalties shall be paid within thirty (30) days of the effective date of this Consent Order. Any and all civil penalty payments shall be paid by certified check, cashier's check, or money order payable to the **State of Tennessee**, which shall be mailed or delivered to: **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243**. A notation shall be placed on said check that it is payable for the civil penalty of Clarence L. Nabers, Jr., Complaint No. 2018033521.
35. Respondent must pay, pursuant to Tenn. Code Ann. §§ 63-6-214 (k) and 63-1-144(a)(4), the actual and reasonable costs of prosecuting this case to the extent allowed by law, including all costs assessed against the Board by Office of Investigations, Secretary of State, Administrative Procedures Division as well as the Office of General Counsel in connection with the prosecution of this matter. These costs will be established by an Assessment of Costs prepared and filed by counsel for the Department. Said costs shall not exceed five thousand dollars (\$5,000.00). Any and all costs shall be paid in full within sixty (60) days from the issuance of the Assessment of Costs by submitting a certified check, cashier's check, or money order payable to the State of Tennessee, which shall be mailed or delivered to the address listed below. A notation shall be placed on said check that it is payable for the costs of Clarence L. Nabers, Jr., Complaint No. 2018033521.
36. Upon expiration of the two (2) year probationary period and successful completion of the conditions listed in paragraphs 34 through 42, including the payment of all fines and civil penalties, Respondent may request an Order of Compliance to have the probation of

APPROVED FOR ENTRY:



Clarence L. Nabers, Jr., DDS
Respondent

5/31/2019

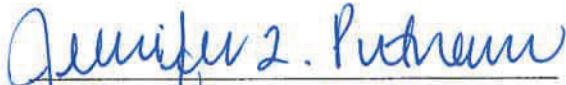
DATE



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5/31/19

DATE



Jennifer L. Putnam (B.P.R. # 29890)
Assistant General Counsel
Office of General Counsel
Tennessee Department of Health
665 Mainstream Drive, 2nd Floor
Nashville, Tennessee 37243

6/5/19

DATE

Respondent's license to practice dentistry lifted. Respondent must personally appear before the board to have the probation lifted.

37. Respondent understands that this is a formal disciplinary action and will be reported to the National Practitioner Data Bank (NPDB) and/or similar agency.

V. APPROVAL BY THE BOARD

This **CONSENT ORDER** was approved by a majority of a quorum of the Tennessee Board of Dentistry at a public meeting of the Board and signed this 11th day of July, 2019.




President
Tennessee Board of Dentistry

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Consent Order has been served upon Respondent, Clarence L. Nabers, Jr., DDS, by and through counsel, Alexandria S. Fisher, Esq., Frost Brown Todd, LLC, 150 3rd Ave South, Suite 1900, Nashville, TN 37201 by delivering same in the United States Mail, Certified Mail Number 7016 0600 0000 6508 9020 return receipt requested, and by United States First Class Mail, with sufficient postage thereon to reach its destination and via email at afisher@fbtlaw.com.

This 12th day of July, 2019.



Jennifer L. Putnam
Assistant General Counsel